

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
OFFICE OF FINANCIAL AND INSURANCE SERVICES**

Before the Commissioner of Financial and Insurance Services

**IN THE MATTER OF: Request by
Jeffrey C. Gifford, Varnum
Ridering, Schmidt, Howlett, for a
determination that Firstbank – West
Branch may engage in agent finding
activities**

Order No.: 02-23-BT

**Issued and entered
this 7th day of June, 2002
by
Frank M. Fitzgerald
Commissioner**

ORDER authorizing Firstbank – West Michigan to engage in agent finding activities

**I
BACKGROUND**

Firstbank – West Michigan (Firstbank) proposes to act as an agent finder for ByOwner.com (Company), a New York corporation not affiliated with Firstbank, that operates an Internet Web site where sellers of real property (property) may list said property for sale to potential purchasers. Firstbank proposes to contract with Company for the former to “identify, solicit, negotiate and consummate transactions with, sellers whereby such sellers may post their property on the Company’s web site.” Firstbank proposes to receive a commission based upon bringing a seller and the Company together to permit seller to advertise property on Company’s Web site. The commission would not be based on sale of the advertised property.

The request represented that Firstbank may provide a hyperlink from its Web site to Company’s Web site and that Firstbank would make appropriate disclosures on the Firstbank Web site, in advertising and promotional materials, and in communications with sellers of property relative to the relationship between Firstbank and Company, that Firstbank does not endorse or guarantee Company’s services, and that seller listings will be with Company, not with Firstbank.

The request also inquired whether Firstbank may engage in “identifying, making inquiries as to the interest of, introducing or arranging meetings for, or otherwise bringing together, parties interested in the purchase or sale of real estate, where the parties themselves negotiate and consummate the transaction (“Finding Activities”).”

II ISSUE

The principal issues are whether a bank subject to the Michigan Banking Code of 1999, MCL 487.11101 et seq., may engage in finding activities and agent finding activities and, if so, whether it may receive compensation for these activities.

III ANALYSIS

The Michigan Banking Code of 1999 (Code) sets forth the powers that state-chartered banks may exercise. The Code neither specifically authorizes state-chartered banks to act as finders or agents for finders nor specifically prohibits the proposed activities.

In addition to specifically enumerated bank powers, the Code contemplates that additional powers may be authorized to banks by the Commissioner. Section 4101 permits banks to exercise powers authorized by the Commissioner by order or declaratory ruling.¹ Section 2204 of the Code permits the Commissioner, by order or declaratory ruling, to authorize banks to exercise powers not specifically enumerated in the Code.² The section sets forth criteria the Commissioner must consider in exercising this discretion to authorize new powers for state-chartered banks.

¹ “Sec. 4101. (3) In addition, a bank has the powers granted by order or declaratory ruling of the commissioner.” *MCL 487.14101(3)*

² “Sec. 2204. (1) The commissioner may issue declaratory rulings in accordance with the administrative procedures act of 1969, or issue orders on applications by 1 or more banks to exercise powers not specifically authorized by this act that will authorize banks to exercise powers appropriate and necessary to compete with other providers of financial services.” *MCL 487.12204(1)*

(2) In the exercise of the discretion permitted by this section, the commissioner shall consider the ability of banks to exercise any additional power in a safe and sound manner, the authority of depository institutions operating under state or federal law or regulation, the powers of other competing entities providing financial services, and any specific limitations on bank powers contained in this act or in any other law of this state. The commissioner shall give notice, at least quarterly, to all banks of declaratory rulings, orders, or determinations issued during the preceding quarter under this section. *MCL 487.12204(2); emphasis added.*

First, federal regulations allow national banks to engage in “finding” activities³ and to deliver through electronic means “any activity, function, product, or service that it is otherwise authorized to perform, provide or deliver.”⁴ In amendments to 12 CFR Part 7 published May 17, 2002, the Comptroller of the Currency confirmed the authority of national banks to, among other things,

- convey “between interested parties expressions of interest, bids offers, orders, and confirmations relating to a transaction;”
- convey “other types of information between potential buyers, sellers and other interested parties;
- communicate “information about providers of products and services, and proposed offering prices and terms to potential markets for these products and services;”
- “instruct and assist individuals in the completion of documents”.

The Comptroller’s regulation permits national banks to advertise availability of and accept a fee for finder services.

In addition, the Comptroller of the Currency has authorized national banks to establish hyperlinks between their home pages and third party home pages to enable bank customers to purchase third party products and services,⁵ and has authorized national banks to host web sites and operate “virtual malls”⁶ that provide links to third party merchants. Thus, the proposed activities may be conducted by national banks operating under federal law, and they may be conducted electronically.

Second, the Code does not specifically prohibit state banks from engaging in the proposed activities. We know of no other provision of Michigan law that specifically limits bank authority to conduct finder or agent finder activities.

³ 12 CFR 7.1002

⁴ 12 CFR 7.5002

⁵ Conditional Approval #221, Office of the Comptroller of the Currency, December 3, 1996

⁶ Conditional Approval #369, Office of the Comptroller of the Currency, February 25, 2000

Third, the proposed activity does not represent an inherent threat to the safety and soundness of Firstbank. The parties to a transaction would handle actual negotiation and consummation of the transaction. Further, as an agent finder, Firstbank will not incur development and maintenance costs, for it would act as an agent of an existing firm. Firstbank will disclose to potential sellers that it does not endorse or guarantee the services or products of Company. Seller listings of property will be with Company, not Firstbank. Firstbank has no investment interest in Company. Firstbank will exercise no control over the operations or management of Company.

Finally, the Code does not prohibit a bank from receiving compensation for its activities.

In conclusion, I find that the finder activity and the agent finder activity proposed by Firstbank are not specifically limited by the Michigan Banking Code of 1999; that depository institutions operating under federal law and regulations and which compete with Firstbank have authority to conduct, advertise, and be compensated for the proposed activities; that this authority is appropriate to enable Firstbank to compete with other financial service providers; and that a bank may exercise the power to act as a finder or as an agent finder in a safe and sound manner.

IV ORDER

Therefore, it is **ORDERED** that Firstbank may engage in finding activities and agent finding activities as represented in Mr. Gifford's letter of April 1, 2002, and may advertise and be compensated for its finding activities and agent finding activities. This determination does not exempt Firstbank from any other requirement in state law that it obtain a license to perform specific finding or agent finding activities.

/ss/

**Frank M. Fitzgerald
Commissioner**